

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ALBERT COSIMO,

Defendant.

CASE NO. 8:05CR242

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 96, 97). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The government objects to the drug quantity and the base offense level reflected in ¶ 22. The Defendant also objects to the drug quantity and base offense level appearing in ¶¶ 16 and 22. The plea agreement provides that the most readily provable amount of a mixture or substance containing methamphetamine is at least 50 but less than 200 grams, resulting in base offense level 26. The PSR, however, states that the Defendant is responsible for 79.1 grams of actual methamphetamine. The offense involved Marisol Perez-Fernandez, who has already been sentenced in 8:05CR242, on the basis of the drug quantity agreed upon in Defendant Albert Cosimo's plea agreement. (8:05CR242, Filing No. 67.) The Court's tentative findings are that the parties' objections are granted.

IT IS ORDERED:

1. The government's Objections to the Presentence Investigation Report (Filing No. 96) are granted;

2. The Defendant's Objections to the Presentence Investigation Report (Filing No. 97) are granted;

3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 10th day of April, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge